

RESOLUTION NO. 74467

A RESOLUTION OF NECESSITY OF THE COUNCIL OF THE CITY OF SAN JOSÉ MAKING CERTAIN FINDINGS AND DETERMINATIONS RELATING TO THE EXERCISE OF THE POWER OF EMINENT DOMAIN PURSUANT TO ARTICLE 2, CHAPTER 4, TITLE 7 OF PART 3 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE FOR THE FOLLOWING PROJECT: THE ACQUISITION OF TWO SURFACE EASEMENTS FOR THE LOWER SILVER CREEK TRAIL PROJECT, OVER REAL AND PERSONAL PROPERTY ON VACANT LAND OWNED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, LOCATED AT THE WEST SIDE OF SILVERSTONE PLACE, SAN JOSÉ, CALIFORNIA (APN NOS. 486-39-029 AND 486-30-100; AND AUTHORIZING AND EMPOWERING THE CITY ATTORNEY TO FILE SUIT IN EMINENT DOMAIN TO ACQUIRE SUCH PROPERTY INTEREST, TO APPLY FOR AN ORDER OF POSSESSION BEFORE JUDGMENT, AND TO PROSECUTE SAID ACTION TO FINAL JUDGMENT; AND AUTHORIZING THE DEPOSIT OF MONEY IN THE STATE TREASURY CONDEMNATION FUND FOR POSSESSION OF SAID PROPERTY FROM THE FUNDS LAWFULLY AVAILABLE THEREFORE

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

SECTION 1. The Council of the City of San José hereby finds, determines and declares that:

- A. The public interest and necessity require the following proposed project: the acquisition by the City of San José of two surface easements Over certain property located at the west side of Silverstone Place, in the City of San José, being APN Nos. 486-39-029 and 486-30-100, as described in EXHIBITS "A-1", "A-2", "B-1", "B-2" and "C", attached hereto and by reference made a part hereof, for the following project: LOWER SILVER CREEK TRAIL PROJECT.
- B. The proposed project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.
- C. The acquisition of property described in Section 3 of this resolution (hereinafter "said property") is necessary for said proposed project.
- D. The said public project is the use to which said property is to be applied.
- E. Said use is a use authorized by law.
- F. The taking of said property is necessary to such use.

- G. Prior to adopting this resolution of necessity, and prior to initiating negotiations for acquisition of said property, the City of San José established an amount of compensation not less than its approved appraisal of the fair market value of said properties and made an offer to the owners of record to acquire the said property for the full amount, conditioned upon ratification of the offer by the City Council's execution of a contract and/or adoption of this resolution; said offer conformed to the requirements of Government Code § 7267.2.

SECTION 2. That this Council hereby declares and states: The public use for which said property is to be taken is: the construction and maintenance of landscaping and recreational trail improvements to include a 12' wide paved trail, irrigation, landscaping and trees. The trail will provide a park/recreational environment that will improve the overall appearance of the neighborhood. The statutes which authorize the City of San José to acquire said properties by eminent domain are Sections 1240.010, 1240.110, 1240.120, 1240.125 and 1240. 510 of the Code of Civil Procedure, Sections 37350.5 and 40404 of the Government Code of the State of California and Section 200 of the Charter of the City of San José.

SECTION 3. That the City of San José acquire said property for said project by proceedings in eminent domain in accordance with the provisions of Article 1, Section 19, of the Constitution of the State of California, and the provisions of the laws and statutes of the State of California relating to eminent domain.

Said property being the real property described in EXHIBITS "A-1", "A-2", "B-1", "B-2" and "C", attached hereto and by reference made a part hereof. The interest in said property that is to be acquired by the City of San José are two surface easements.

SECTION 4. That the City Attorney of the City of San José be and is hereby authorized and empowered to institute, maintain and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the said property herein above described, and to take all steps necessary for said condemnation in the name of the City of San José.

SECTION 5. That the Director of Public Works of the City of San José be and hereby is authorized and empowered to make deposit from lawfully available funds of the City of San José in the amount determined by the court in which eminent domain

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proceedings herein authorized are commenced or which may otherwise be allowed and/or required by law for the maintenance of the proceeding in eminent domain.

ADOPTED this 24th day of June 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED.

NOES: NONE.

ABSENT: CONSTANT.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk